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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 JOSE DECASTRO,
11 Plaintiff,

12 vs.

13 LAS VEGAS METROPOLITAN POLICE
14 DEPARTMENT; STATE OF NEVADA;
15 BRANDEN BOURQUE; JASON TORREY;
16 C. DINGLE; B. SORENSEN; JESSE
17 SANDOVAL; OFFICER DOOLITTLE and
DOES 1 to 50, inclusive,

Defendants.

Case Number:
2:23-cv-00580-APG-EJY

**DEFENDANTS LVMPD, SGT.
TORREY, OFC. BOURQUE, OFC.
DINGLE, OFC. SORENSEN, OFC.
SANDOVAL AND OFC. DOOLITTLE'S
MOTION FOR SUMMARY
JUDGMENT**

18 Defendants Las Vegas Metropolitan Police Department, Ofc. Torrey, Ofc. Bourque,
19 Ofc. Dingle, Ofc. Sorenson, Ofc. Sandoval and Ofc. Doolittle (“LVMPD Defendants”), by
20 and through their attorneys of record, Marquis Aurbach, hereby file their Motion for
21 Summary Judgment. This Motion is made and based upon the Memorandum of Points &
22 Authorities, the pleadings and papers on file herein and any oral argument allowed by
23 counsel at the time of hearing.

24 **MEMORANDUM OF POINTS & AUTHORITIES**

25 **I. INTRODUCTION**

26 At its core, this is a § 1983 wrongful arrest and excessive force lawsuit. On March
27 15, 2023, Defendant Branden Bourque (“Ofc. Bourque”) arrested Plaintiff Jose DeCastro
28 (“DeCastro”) for obstructing a lawful traffic stop when he approached the detainee of the

1 traffic stop and subsequently refused to comply with Ofc. Bourque's commands to move
 2 away from the detainee. After DeCastro filed his First Amended Complaint, the Defendants
 3 moved to dismiss all DeCastro's claims, except his excessive force claim. On October 23,
 4 2023, this Court issued its order granting in part Defendants' Motion to Dismiss and
 5 granting DeCastro leave to amend certain claims. (ECF No. 44). DeCastro amended and
 6 filed his Second Amended Complaint ("SAC") on November 11, 2023. (ECF No. 61).
 7 Discovery in this case closed on May 15, 2024. The LVMPD Defendants now move for
 8 summary judgment on each of DeCastro's claims pursuant to FRCP 56.

9 **II. FACTUAL AND PROCEDURAL HISTORY**

10 **A. FACTUAL BACKGROUND.**

11 **1. The arrest.**

12 In support of the instant Motion, Defendants submit body worn camera ("BWC")
 13 video evidence from the perspective of the subject officers: **Exhibit A**, Bourque BWC;
 14 **Exhibit B**, Sandoval BWC; **Exhibit C**, Dingle BWC; **Exhibit D**, Sorenson BWC; **Exhibit**
 15 **E**, Doolittle BWC; **Exhibit F**, Torrey BWC. In addition, the Defendants submit the
 16 declarations of the Defendant Officers in support of the instant Motion, authenticating the
 17 body worn camera footage. **Exhibit G**, Officer Declarations.

18 Additionally, DeCastro has custody and control of a YouTube channel, and he
 19 references his videos and recording of the subject incident multiple times in the SAC. (ECF
 20 No. 61 at ¶¶36, 37, 39, 44, 52, 70-72). DeCastro's YouTube video detailing the subject
 21 incident, which is comprised of his own video footage, clips of BWC footage, and
 22 DeCastro's overlayed text commentary, is attached hereto as **Exhibit H**. A separate
 23 YouTube creator has uploaded portions of DeCastro's own videos wherein DeCastro has
 24 discussed the subject incident. In one of those videos, DeCastro repeatedly acknowledged he
 25 intended to resist Ofc. Bourque's efforts to detain him. *See Exhibit I*, Video of DeCastro
 26 Discussing the Subject Incident.

27 On March 15, 2023, at approximately 4:30 p.m., Ofc. Bourque conducted a traffic
 28 stop of a silver Hyundai Elantra. (Ex. A at T23:18:00). DeCastro approached the traffic stop

1 while recording with his phone and began talking to the traffic detainee. (Ex. A at
 2 T23:26:48; Ex. H at 0:00-0:14). When DeCastro approached, Ofc. Bourque was sitting in his
 3 LVMPD patrol vehicle. (*Id.*) As DeCastro approached the driver's side window of the
 4 detainee, Ofc. Bourque exited his vehicle and told DeCastro "Don't engage with my driver.
 5 Back up." (Ex. A at T23:27:05). DeCastro did not follow Ofc. Bourque's command, and
 6 Ofc. Bourque reiterated, "Hey, back up. Back up. You're not involved." (*Id.* at T23:27:10).
 7 DeCastro was only a few feet away from the driver's side window of the traffic detainee.
 8 (*Id.*; *see also* Ex. H at 0:00-0:14).

9 DeCastro backed up one or two feet, remaining in close proximity to the silver
 10 Hyundai Elantra and the driver's side window. (Ex. A at T23:27:16; *see also* Ex. H at 0:13-
 11 0:15). Ofc. Bourque clarified to DeCastro "You can film but you need to stay away from my
 12 driver. Back up." (Ex. A at T23:27:18; Ex. H at 0:16-0:19.) DeCastro did not move. (*Id.*)
 13 Ofc. Bourque then told DeCastro, "Back up or I'm going to detain you." (Ex. A at
 14 T23:27:20; *see also* Ex. H at 0:20-0:22). DeCastro replied, "You're going to detain me
 15 how?" to which Ofc. Bourque replied "For obstructing. Get away from my car stop." (Ex. A
 16 at T23:27:24; *see also* Ex. H at 0:22-0:25). DeCastro asserted he would continue to stand
 17 right there, claimed he was ten feet away, he is a constitutional law scholar, and told Ofc.
 18 Bourque his name would be on the lawsuit, implying any resistance to DeCastro's
 19 interference with the traffic stop would be met with legal action. (Ex. A at T23:27:28; *see*
 20 *also* Ex. H at 0:25-0:34).

21 Ofc. Bourque attempted to appeal to DeCastro's better nature by noting the traffic
 22 detainee deserved privacy, to which DeCastro responded "Mind your own fucking business.
 23 Mind your own business. I'm a member of the press. Go get in your car and do your job
 24 little doggy." (Ex. A at T23:27:33; *see also* Ex. H at 0:33-0:41). During the entirety of the
 25 initial interaction, DeCastro remained near the vehicle of the detained driver and refused to
 26 move. (Ex. A at T23:27:16).

27 In light of DeCastro's obstructive conduct and refusal to comply with officer
 28 commands, Ofc. Bourque told DeCastro "You are being detained right now," and told the

1 detained driver of the silver Hyundai Elantra that she was free to go. (Ex. A at T23:27:43;
 2 *see also* Ex. H at 0:42-0:50). As Ofc. Bourque directed his attention back to DeCastro, he
 3 began to walk backwards, exclaiming he was a journalist. (Ex. A at T23:27:47; *see also* Ex.
 4 H at 0:43-0:58). DeCastro refused to comply and moved away from Ofc. Bourque. (*Id.*) Ofc.
 5 Bourque called for additional units (Ex. A at T23:27:58) and reiterated DeCastro was
 6 detained. DeCastro demanded a supervisor. (Ex. A at T23:28:17; Ex. H at 1:11-1:30).

7 Ofc. Bourque then ordered DeCastro to walk over to Ofc. Bourque's patrol car, to
 8 which DeCastro verbally agreed. (Ex. A at T23:28:36). Ofc. Bourque reiterated DeCastro
 9 was being detained for obstruction and ordered DeCastro to place his phone on the hood of
 10 the patrol vehicle. (*Id.* at T23:28:38). DeCastro refused, asserting he is a "constitutional law
 11 scholar" and Ofc. Bourque could not take his phone. (*Id.* at T23:28:43). As Ofc. Bourque
 12 approached DeCastro, DeCastro extended his arm and attempted to push Ofc. Bourque away
 13 from him. (*Id.* at T23:28:49; Ex. I at 1:52-2:25). In a later video recording, DeCastro
 14 explained his resistance by admitting he had "had underhooks" on Ofc. Bourque, was
 15 "putting [him]self where he wanted to put [him]self," and was "controlling [Ofc. Bourque]
 16 with one arm." (Ex. I at 1:39-2:10).

17 Ofc. Bourque proceeded to grab DeCastro and escort him to the space in front of his
 18 patrol vehicle. (Ex. A at T23:28:50). At that time, Ofc. Dingle arrived on scene, and he and
 19 Ofc. Bourque placed DeCastro in handcuffs despite DeCastro's continued resistance. (*Id.* at
 20 T23:29:05; Ex. H at 2:00-2:50). DeCastro made Ofc. Bourque aware of a prior shoulder
 21 injury, and Ofc. Bourque placed DeCastro in two pairs of handcuffs to adhere to his medical
 22 needs. (ECF No. 61 at ¶51).

23 DeCastro claims he was patted down and struck in the groin with a closed fist. (ECF
 24 No. 61 at ¶62). Officer Dingle's BWC captured the alleged groin strike. (*See* Ex. C at
 25 T23:32:59). The video establishes Ofc. Bourque's pat-down of DeCastro was routine,
 26 harmless and Ofc. Bourque did not strike DeCastro's genitals. (*Id.*) DeCastro never flinched
 27 or complained of pain as a result of the pat-down. (*Id.*)

1 Shortly thereafter, Ofc. Sandoval and Ofc. Sorenson arrived on the scene. (*Id.* at
 2 T23:34:11; Ex. D at T23:34:05). After observing DeCastro's recalcitrance, Ofc. Sandoval
 3 explained to DeCastro the officers had a way to do things and DeCastro's continued refusal
 4 to obey officer commands would result in his arrest for obstruction. (Ex. D at T23:34:52).
 5 DeCastro retorted "I have a way to do things too. I sue cops all over the country. That's
 6 what I do." (*Id.* at T23:34:56). The Defendant Officers ordered DeCastro continue to face
 7 the patrol vehicle. (Ex. D at T23:35:00). DeCastro proceeded to resist and fail to comply
 8 with that order for the next several minutes, while arguing with and taunting the Defendant
 9 Officers. (Ex. D at T23:35:00; Ex. E at T23:40:26-T23:42:32).

10 Due to DeCastro's continued willful disobedience of the officers' orders for him to
 11 face the patrol vehicle, Ofc. Sandoval proceeded to stand behind DeCastro and hold his left
 12 arm to ensure DeCastro's compliance with the officers' orders. (Ex. E at T23:42:37).
 13 DeCastro repeatedly asserts in the SAC that Ofc. Sandoval was squeezing his arm and
 14 causing him pain. (ECF No. 61, ¶¶51-58). However, the footage clearly demonstrates Ofc.
 15 Sandoval was holding DeCastro's arm in a reasonable manner and not applying any
 16 significant force to DeCastro's arm. (Ex. D at T23:42:37-T00:06:57; Ex. E at T23:42:47-
 17 T23:55:30 and T00:02:47-T00:06:27). DeCastro repeatedly pulled away from Ofc.
 18 Sandoval, and as a result, was placed in the back of Ofc. Bourque's patrol vehicle. (Ex. D at
 19 T00:06:22; Ex. E at T00:06:22).

20 Shortly thereafter, Defendant Erland Jason Torrey ("Sgt. Torrey") arrived at the
 21 scene. (Ex. F at T00:06:26). Sgt. Torrey had a conversation with DeCastro in which he
 22 represented he had reviewed the BWC and believed DeCastro was clearly obstructing on
 23 account of interfering with the traffic stop and refusing to step back when commanded to do
 24 so, and when Ofc. Bourque told DeCastro he was being detained, DeCastro proceeded to
 25 resist. (Ex. F at T00:18:12). After Ofc. Bourque explained what DeCastro did wrong,
 26 DeCastro requested they work it out and not arrest him in order to avoid his bringing a
 27 lawsuit and causing LVMPD to incur substantial attorney fees in defending the lawsuit. (Ex.
 28 F at T00:22:25-T00:24:45). During the conversation, Sgt. Torrey made clear to DeCastro

1 there was no issue with him filming the traffic stop, but being up close to the car stop,
2 ignoring officer commands, and resisting detention/arrest were the reasons he was being
3 arrested. (Ex. F at T00:31:00). As noted in Ofc. Bourque’s report, affirmed by Sgt. Torrey
4 and the BWC, the reasons why DeCastro was arrested was for engaging with a detained
5 driver, refusing to give an officer reasonable space to work, and refusing to obey lawful
6 commands after being advised he was being detained. (*Id.*; ECF No. 61 at ¶68). Ofc.
7 Bourque’s report further stated DeCastro had admitted to getting in trouble numerous times
8 in the past for the same reasons, and his habitual behavior of obstructing police officers and
9 claiming it was justified because of his right to film the police would continue in the area if
10 he was not cited. (**Exhibit J**, Officer Bourque’s Report).

2. The criminal trial.

In connection with the subject incident, DeCastro was charged with: (1) Obstructing a Public Officer – NRS 197.190; and (2) Resisting a Police Officer or Resisting Arrest – NRS 199.280. (**Exhibit K**, 3/15/23 Citation). DeCastro pled not guilty and proceeded to a bench trial on the charges in the Clark County Justice Court. (**Exhibit L**, Case No. 23-CR-013015 Docket).

On March 19, 2024, DeCastro’s criminal bench trial was held in front of the Honorable Ann Zimmerman. (*See id.*) DeCastro was represented by his counsel of record in this action at the criminal trial. (*Id.*) DeCastro was convicted on both charges and sentenced to six months in jail. (*Id.*)

B. PROCEDURAL HISTORY.

On April 17, 2023, DeCastro filed the instant lawsuit. (ECF No. 1). On May 7, 2023, DeCastro amended his complaint (“FAC”). (ECF No. 13). On October 23, 2023, this Court issued its Order Granting in part Defendants’ Motion to Dismiss, (ECF No. 61). Specifically, this Court dismissed with prejudice DeCastro’s claims for unreasonable search and seizure, false imprisonment, invasion of privacy and negligence-based search and seizure. (ECF No. 61 at 16). This Court also dismissed without prejudice DeCastro’s equal protection claim, First Amendment retaliation claim, *Monell* claim, § 1981 claim, and

1 negligence-based claim for biased policing without prejudice, DeCastro's excessive force
 2 and supervisor liability claims survived. This Court gave DeCastro leave to amend the
 3 claims dismissed without prejudice. (*Id.*)

4 DeCastro then amended his claims and filed his Second Amended Complaint
 5 ("SAC") on November 27, 2023, which is now the operative Complaint in this case. (ECF
 6 No. 61). The SAC contains the following causes of action:

7 First Claim for Relief: 42 U.S.C. § 1983 Fourth Amendment false arrest
 8 against Officers Bourque, Torrey, Dingle, Sorenson, Sandoval, and Doolittle.

9 Second Claim for Relief: 42 U.S.C. § 1983 Fourth Amendment illegal search
 10 and seizure claim against Officers Bourque, Torrey, Dingle, Sorenson,
 Sandoval, and Doolittle.

11 Third Claim for Relief: 42 U.S.C. § 1983 Fourth Amendment excessive force
 12 against Officers Bourque and Sandoval.

13 Fourth Claim for Relief: Nevada state law defamation claim against Officers
 14 Bourque, Torrey, Dingle, Sorenson, Sandoval, and Doolittle.

15 Fifth Claim for Relief: 42 U.S.C. § 1983 First Amendment "chilling" claim
 16 against all defendants

17 Sixth Claim for Relief: 42 U.S.C. § 1983 First Amendment retaliation claim
 18 against all defendants

19 Seventh Claim for Relief: 42 U.S.C. § 1983 *Monell* liability claim against
 20 LVMPD, Nevada, and Sgt. Torrey.

21 Eighth Claim for Relief: 42 U.S.C. § 1983 selective enforcement and unequal
 22 police action claim against all defendants.

23 Ninth Claim for Relief: Nevada state law battery claim against Officer
 24 Sandoval.

25 Tenth Claim for Relief: Nevada state law invasion of privacy claim against
 26 Officers Bourque, Sandoval, Torrey, Dingle, Sorenson, and Doolittle.

27 Eleventh Claim for Relief: Nevada state law negligence claim against all
 28 individual defendants.

29 Twelfth Claim for Relief: 42 U.S.C. § 1983 failure to intervene claim against
 30 all individual defendants.

31 Thirteenth Claim for Relief: Nevada state law civil conspiracy claim against
 32 all individual defendants.

1 Fourteenth Claim for Relief: Nevada state law abuse of process claim against
 2 Officers Bourque, Sandoval, Torrey, Dingle, Sorenson, and Doolittle.

3 Fifteenth Claim for Relief: 42 U.S.C. § 1983 *Monell* failure to train claim
 4 against Officer Torrey, LVMPD, and the State of Nevada. (ECF No. 61,
 p.19-33).

5 (ECF No. 61).

6 On December 11, 2023, the LVMPD Defendants filed a Motion to Dismiss
 7 Plaintiff's Second Amended Complaint, or in the Alternative, Motion for Summary
 8 Judgment. (ECF No. 66). On February 2, 2024, DeCastro filed his Response and Opposition
 9 to Defendants' Joint Motion to Dismiss Plaintiff's Second Amended Complaint, or in the
 10 Alternative, Motion for Summary Judgment¹. (ECF No. 79). On February 9, 2024, the
 11 LVMPD Defendants filed their Reply in Support of the Motion. (ECF No. 80). On April 5,
 12 2024, the LVMPD Defendants filed their Motion for Leave to File Supplemental Evidence
 13 in Support of Summary Judgment. (ECF No. 83). The LVMPD Defendants' Motions (ECF
 14 No. 66; ECF No. 83) are currently pending before the Court.

15 **III. LEGAL STANDARD**

16 **A. SUMMARY JUDGMENT LEGAL STANDARD**

17 Under Rule 56 of the Rules of Federal Procedure, “[a] party may move for summary
 18 judgment, identifying each claim or defense - - or the part of each claim or defense - - on
 19 which summary judgment is sought [and] [t]he court shall grant summary judgment if the
 20 movant shows that there is no genuine dispute as to any material fact and the movant is
 21 entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). It is well established that the
 22 purpose of summary judgment “is to isolate and dispose of factually unsupported claims.”
 23 *Celotex v. Catrett*, 477 U.S. 317, 323-24 (1986).

24 The rule, however, is not a “procedural short cut,” but a “principal tool [] by which
 25 factually insufficient claims or defenses [can] be isolated and prevented from going to trial
 26 with the attendant unwarranted consumption of public and private resources.” *Id.* at 327.

27 ¹ Plaintiff was litigating the instant case *pro se* until his counsel of record filed a notice of
 28 appearance on January 10, 2024. (ECF No. 76).

1 The moving party bears the initial burden of demonstrating the absence of a genuine dispute
 2 as to material fact. *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc). The
 3 burden then shifts to the non-moving party to go beyond the pleadings and set forth specific
 4 facts demonstrating there is a genuine issue for trial. *Far Out Prods., Inc. v. Oskar*, 247 F.3d
 5 986, 997 (9th Cir. 2001). “If the non-moving party fails to make this showing, the moving
 6 party is entitled to judgment as a matter of law.” *Id.*

7 When video evidence exists, courts should rely on the video evidence if it “blatantly
 8 contradicts” the non-moving party’s version of events. *Hughes v. Rodriguez*, 31 4th 1211,
 9 1218-19 (9th Cir. 2022) (*citing Scott v. Harris*, 550 U.S. 372, 378 (2007)). And, although a
 10 court must “view the facts and draw reasonable inferences ‘in the light most favorable to the
 11 party opposing the [summary judgment] motion,’” the court need not credit facts
 12 “unsupported by the record such that no reasonably jury could believe them, [and] need not
 13 rely on those facts for purposes of ruling on the summary judgment motion.” *Wilkinson v.*
 14 *Torres*, 610 F.3d 546, 550 (9th Cir. 2010) (quoting *Scott*, 550 U.S. at 378-80).

15 **B. 42 U.S.C. § 1983 LEGAL STANDARD**

16 42 U.S.C. § 1983 is not itself a source of substantive rights, but merely the
 17 procedural vehicle by which to vindicate federal rights elsewhere conferred. *See Albright v.*
 18 *Oliver*, 510 U.S. 266, 271 (1994). To make out a prima facie case under § 1983, a plaintiff
 19 must show that a defendant: (1) acted under color of law, and (2) deprived the plaintiff of a
 20 constitutional right. *See Borunda v. Richmond*, 885 F.2d 1384, 1391 (9th Cir. 1989). The
 21 Defendant Officers do not dispute that they acted under color of law. Therefore, the task of
 22 this Court is to determine whether the Defendant Officers violated the Constitution. *See*
 23 *Albright*, 510 U.S. at 271. In addition, the Defendant Officers have raised the affirmative
 24 defense of qualified immunity.

25 A defendant in a § 1983 action is entitled to qualified immunity from damages for
 26 civil liability if his conduct did not violate clearly established statutory or constitutional
 27 rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800,
 28 818 (1982). The Supreme Court has often stressed the importance of deciding qualified

1 immunity “at the earliest possible stage in litigation” in order to preserve the doctrine’s
 2 status as a true “immunity from suit rather than a mere defense to liability.” *Hunter v.*
 3 *Bryant*, 502 U.S. 224, 227 (1991).

4 “In determining whether an officer is entitled to qualified immunity, [a court]
 5 consider[s] (1) whether there has been a violation of a constitutional right; and (2) whether
 6 that right was clearly established at the time of the officer’s alleged misconduct.” *Lal v.*
 7 *California*, 746 F.3d 1112, 1116 (9th Cir. 2014) (citation omitted). Consequently, at
 8 summary judgment, a court can “only” deny an officer qualified immunity in a § 1983
 9 action “if (1) the facts alleged, taken in the light most favorable to the party asserting injury,
 10 show that the officer’s conduct violated a constitutional right, and (2) the right at issue was
 11 clearly established at the time of the incident such that a reasonable officer would have
 12 understood [his] conduct to be unlawful in that situation.” *Torres v. City of Madera*, 648
 13 F.3d 1119, 1123 (9th Cir. 2011)

14 **IV. LEGAL ARGUMENT**

15 **A. THIS COURT HAS ALREADY DISMISSED DECASTRO’S FIRST,**
SECOND, TENTH, AND ELEVENTH CAUSES OF ACTION WITH
PREJUDICE.

16
 17 DeCastro’s SAC reasserts his claims for unreasonable search and seizure based on
 18 the arrest and search (first and second cause of action), invasion of privacy (tenth cause of
 19 action), and negligence based on the arrest and search (eleventh cause of action). This Court
 20 has already dismissed these claims with prejudice. (ECF No. 44). Accordingly, Defendants
 21 request this Court strike those claims from the SAC or reaffirm their dismissal with
 22 prejudice.

23 **B. LVMPD DEFENDANTS ARE ENTITLED TO SUMMARY**
JUDGMENT ON DECASTRO’S 42 U.S.C. § 1983 CLAIMS.

24
 25 **1. DeCastro’s Fourth Amendment Excessive Force Claim Fails**
(Third COA).

26
 27 **a. Fourth Amendment Excessive Force Legal Standards.**

28 In evaluating a Fourth Amendment excessive force claim, a court asks “whether the
 officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances

1 confronting them.” *Graham v. Connor*, 490 U.S. 386, 397 (1989). “The calculus of
 2 reasonableness must embody allowance for the fact that police officers are often forced to
 3 make split-second judgments - in circumstances that are tense, uncertain, and rapidly
 4 evolving - about the amount of force that is necessary in a particular situation.” *Id.* at 396-
 5 97. Reasonableness “must [therefore] be judged from the perspective of a reasonable officer
 6 on the scene, rather than with the 20/20 vision of hindsight.” *Id.* (citation omitted).

7 To determine the reasonableness of the officers’ actions, a court must “assess the
 8 severity of the intrusion on the individual’s Fourth Amendment rights by evaluating ‘the
 9 type and amount of force inflicted.’” *Glenn v. Washington Cty.*, 673 F.3d 864, 871 (9th Cir.
 10 2011) (quoting *Espinosa v. City & Cty. of S.F.*, 598 F.3d 528, 537 (9th Cir. 2010)). Even in
 11 cases “where some force is justified, the amount actually used may be excessive.” *Santos v.*
 12 *Gates*, 287 F.3d 846, 853 (9th Cir. 2002) (citation omitted).

13 **b. The Defendant Officers Used Reasonable Force to Detain
 14 DeCastro.**

15 The first step in the qualified immunity analysis is to determine whether the officers
 16 violated a constitutional right; i.e., whether the officers’ use of force was objectively
 17 reasonable under the totality of the circumstances. *Graham*, 490 U.S. at 396. DeCastro is
 18 alleging the officers used excessive force while detaining him – namely Ofc. Borque
 19 intentionally punched DeCastro’s genitals during the pat down and Ofc. Sandoval
 20 excessively pinched his arm tightly.

21 First, Ofc. Borque used reasonable force in detaining the admittedly resisting and
 22 obstructive DeCastro. The video shows DeCastro attempting to avoid Ofc. Borque and even
 23 attempting to push him away, i.e., active resistance. DeCastro’s subsequent commentary
 24 concerning the subject incident on his online media platform(s) confirms that DeCastro was
 25 intentionally resisting Ofc. Bourque’s commands and efforts to detain him. Ex. I. In
 26 response, the only force used by Ofc. Borque was basic empty-hand tactics designed to
 27 control DeCastro and counter his resistance. This force was clearly reasonable. *See Graham*,
 28 490 U.S. at 396 (“Our Fourth Amendment jurisprudence has long recognized that the right

1 to make an arrest or investigatory stop necessarily carries with it the right to use some
 2 degree of physical coercion or threat thereof to effect it.”); *Shafer v. Cnty. of Santa Barbara*,
 3 868 F.3d 1110, 1118 (9th Cir. 2017) (“Shafer’s primary argument on appeal is that Deputy
 4 Padilla . . . had no basis for using *any* force whatsoever. We disagree . . . Deputy Padilla had
 5 probable cause to use *some* degree of force.”). Thus, the video clearly establishes that Ofc.
 6 Borque’s empty hand techniques to control the resisting DeCastro were reasonable.

7 Similarly, DeCastro’s claim Ofc. Sandoval excessively squeezed his arm is refuted
 8 by the video evidence. The videos clearly show Ofc. Sandoval maintained a grip on
 9 DeCastro’s arm due to the fact DeCastro continued to move, twist, and slightly resist after
 10 handcuffing. As explained to DeCastro by Ofc. Sandoval during the subject incident,
 11 because DeCastro was handcuffed and lacked the use of his hands, Ofc. Sandoval needed to
 12 maintain control of DeCastro so he did not fall and injure himself. This is objectively
 13 reasonable.

14 During discovery, DeCastro did not identify any experts, treating physicians, or
 15 provide any admissible evidence he suffered any injuries. Although not dispositive, lack of
 16 injury may be considered in deciding an excessive force claim. *See Arpin v. Santa Clara*
 17 *Valley Transp. Agency*, 261 F.3d 912, 922 (9th Cir. 2001) (“Arpin’s claim of injury is
 18 equally unsupported as she does not provide any medical records to support her claim that
 19 she suffered injury as a result of being handcuffed.”); *see also, Foster v. Metro. Airports*
 20 *Comm’n*, 914 F.2d 1076, 1082 (9th Cir. 1990).

21 Finally, DeCastro’s allegation Ofc. Borque intentionally struck him in the groin is
 22 refuted by the video evidence. Admittedly, it would be excessive for an officer to
 23 gratuitously strike a restrained suspect in the groin. The video confirms this did not happen.
 24 It shows Ofc. Borque performed a routine pat down for weapons and he never struck
 25 DeCastro. Indeed, the video shows DeCastro never even flinched or reacted to the alleged
 26 “strike.” “Not every push or shove . . . violate[s] the Fourth Amendment.” *Graham*, 490
 27 U.S. at 396. Thus, DeCastro’s allegation that Ofc. Borque gratuitously struck his genitals is
 28 “blatantly contradicted” by the video evidence. *See Hughes v. Rodriguez*, 31 F.4th 1211,

1 1219 (9th Cir. 2022) (inmate's allegations could be ignored as they were blatantly
 2 contradicted by the video evidence).

3 Finally, at a minimum, there is no clearly established law prohibiting an officer (1)
 4 from using empty hand techniques to control a suspect resisting arrest, (2) maintaining a
 5 hold of suspect's arm when the suspect is handcuffed and continuing to twist and turn and
 6 disobey clear orders; or (3) perform a routine pat down that includes contact at or near the
 7 groin area. Thus, qualified immunity is appropriate under the clearly established prong in
 8 addition to the constitutional violation prong.

9 **2. DeCastro's Failure to Intervene Claim Fails (Twelfth COA).**

10 A failure to intervene (a/k/a failure to intercede) claim is a subpart of the Fourth
 11 Amendment right to be free of excessive force. *Cunningham v. Gates*, 229 F.3d 1271, 1289
 12 (9th Cir. 2003) ("police officers have a duty to intercede when their fellow officers violate
 13 the constitutional rights of a suspect or other citizen"). Generally, a failure to intervene
 14 claim exists when bystander officers have an opportunity to intervene, but fail to do so. *Lolli*
 15 *v. Cty. of Orange*, 351 F.3d 410, 418 (9th Cir. 2003). "[T]he constitutional right violated by
 16 the *passive* defendant is analytically the same as the right violated by the person who [uses
 17 excessive force]." *U.S. v. Koon*, 34 F.3d 1416, 1447 n.25 (9th Cir. 1994) (emphasis added).
 18 "Importantly, however, officers can be held liable for failing to intercede only if they had an
 19 opportunity to intercede." *Cunningham*, 229 F.3d at 1290.

20 The Ninth Circuit has only recognized a claim for failing to intervene in the
 21 excessive force context. Police officers do not have a general duty to intervene in all alleged
 22 wrongdoings by a fellow officer. *Briscoe v. Madrid*, 1:17-CV-0716-DAD-SKO, 2018 WL
 23 4586251, at *5 (E.D. Cal. Sep. 21, 2018); *Dental v. City Salem*, No. 3:13-CV-01659-MO,
 24 2015 WL 1524476, at *5 (D. Or. Apr. 2, 2015). The duty to intercede is "clearly limited to
 25 the context of excessive force" claims under the Fourth Amendment. *Dental*, 2015 WL
 26 1524476, at *5 (finding that the duty to intercede did not apply to the plaintiff's wrongful
 27 arrest claim); *Gillette v. Malheur Cty.*, 2:14-CV-01542 -SU, 2016 WL 3180228, *7 (D. Or.
 28

1 2016); *Milke v. City of Phoenix*, No. CV-15-00462-PHX-ROS, 2016 WL 5339693 (D.Az.
 2 Jan. 8, 2016) (no duty to intervene outside of excessive force context).

3 As stated above, this claim can only apply to DeCastro's excessive force claim. As
 4 established herein, the video evidence demonstrates clearly and convincingly the Defendant
 5 Officers did not violate DeCastro's Fourth Amendment right to be free from excessive force.
 6 DeCastro cannot establish a genuine dispute of material fact as to that issue. Further,
 7 assuming *arguendo* excessive force was used, none of the uninvolved officers were in a
 8 position to prevent the use of force or stop it. Moreover, no clearly established law exists
 9 which would prohibit any of the force used by the Defendant Officers during the subject
 10 incident. Because the law was not clearly established, it was not clear to the Defendant
 11 Officers they had a duty to intervene and stop the conduct of any of their fellow officers. As
 12 a result, the LVMPD Defendants are necessarily entitled to summary judgment on
 13 DeCastro's failure to intervene claim.

14 **3. DeCastro's First Amendment Retaliation and Selective
 Enforcement Claims Fail (Fifth, Sixth, and Eighth COA).**

15 DeCastro has separately asserted claims for chilling of First Amendment rights (fifth
 16 cause of action), First Amendment retaliation (sixth cause of action), and selective
 17 enforcement (eighth cause of action). A claim for chilling of First Amendment rights is not a
 18 cognizable cause of action. Rather, the analysis of whether a defendant's actions would chill
 19 a person of ordinary firmness from continuing to engage in constitutionally protected
 20 activity is an element of a First Amendment retaliation claim. *See, e.g., Capp v. Cnty. of San*
 21 *Diego*, 940 F.3d 1046 (9th Cir. 2019). Accordingly, Defendants will analyze DeCastro's
 22 fifth and sixth cause of action as a singular First Amendment retaliation cause of action. In
 23 addition, DeCastro's selective enforcement claim is closely related to this claim and,
 24 therefore, will also be analyzed in this section.

25 **a. First Amendment Retaliation and First and Fourteenth
 Amendment Selective Enforcement Legal Standards.**

26 There are three elements to a First Amendment retaliation claim. A plaintiff must
 27 show that (1) he was engaged in a constitutionally protected activity, (2) the defendant's
 28

1 actions would chill a person of ordinary firmness from continuing to engage in the protected
 2 activity, and (3) the protected activity was a substantial or motivating factor in the
 3 defendant's conduct. *O'Brien v. Welty*, 818 F.3d 920, 932 (9th Cir. 2016) (citing *Pinard v.*
 4 *Clatskanie Sch. Dist.* 6J, 467 F.3d 755 (9th Cir. 2006)). To ultimately "prevail on such a
 5 claim, a plaintiff must establish a 'causal connection' between the government defendant's
 6 'retaliatory animus' and the plaintiff's 'subsequent injury.'" *Nieves v. Bartlett*, 587 U.S. 391,
 7 398 (2019) (quoting *Hartman v. Moore*, 547 U.S. 250, 259 (2006)). Specifically, a plaintiff
 8 must show that the defendant's retaliatory animus was "a 'but-for' cause, meaning that the
 9 adverse action against the plaintiff would not have been taken absent the retaliatory motive."
 10 *Id.* (quoting *Hartman*, 547 U.S. at 260). However, a plaintiff may not recover merely on the
 11 basis of a speculative "chill" due to generalized and legitimate law enforcement initiatives.
 12 *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986) (citing *Laird v. Tatum*, 408
 13 U.S. 1, *reh'g denied* 409 U.S. 901, (1972)).

14 In *Nieves*, the U.S. Supreme Court adopted the "no-probable-cause" rule in relation
 15 to retaliatory arrest claims. *Nieves*, 587 U.S. at 403-04. If the plaintiff cannot make a
 16 showing that the arrest was not supported by probable cause, a retaliatory arrest claim fails.
 17 *Id.* The *Nieves* Court, in enacting the no-probable-cause rule, noted that "the no-probable-
 18 cause requirement should not apply when a plaintiff presents objective evidence that he was
 19 arrested when otherwise similarly situated individuals not engaged in the same sort of
 20 protected speech had not been." *Nieves*, 587 U.S. at 407.

21 To prevail on an equal protection selective enforcement claim, the plaintiff must
 22 show "that enforcement had a discriminatory effect and the police were motivated by a
 23 discriminatory purpose." *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 920 (9th Cir. 2012) (en
 24 banc) (quotation omitted). "Enforcement may be shown through a variety of actual or
 25 threatened arrests, searches and temporary seizures, citations, and other coercive conduct by
 26 the police." *Id.* A discriminatory effect may be shown if "similarly situated individuals ...
 27 were not prosecuted." *Id.* (quotation omitted). The standard for proving discriminatory effect
 28 "is a demanding one." *Lacey*, 693 F.3d at 920; *see also Freeman v. City of Santa Ana*, 68

1 F.3d 1180, 1187 (9th Cir. 1995) (“[I]t is necessary to identify a ‘similarly situated’ class
2 against which the plaintiff’s class can be compared.”). Finally, to show discriminatory
3 purpose, the plaintiffs must show the police decided to enforce the law against them based
4 on the exercise of their constitutional rights. *Id.* at 922. A similar claim arises under the First
5 Amendment where “discriminatory enforcement of a speech restriction amount[s] to
6 viewpoint discrimination.” *Menotti v. City of Seattle*, 409 F.3d 1113, 1146-47 (9th Cir.
7 2005); *Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998).

b. The First Amendment Retaliation Claim Fails Because the Officers Had Probable Cause to Arrest DeCastro

This Court has already determined the Defendant Officers had probable cause to arrest DeCastro for obstruction. (ECF No. 44 at p.7). The video footage submitted in support of the instant Motion only further reinforces the Court’s prior determination of the existence of probable cause. Moreover, because DeCastro’s criminal convictions depended on the judge finding the officers had probable cause to arrest DeCastro, a finding of no probable cause in this case would “necessarily imply the invalidity of [DeCastro’s] conviction[s]” and is thus barred by *Heck v. Humphrey*, 512 U.S. 477, 487 (1994) (“in order to recover damages for alleged unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a §1983 plaintiff must prove the conviction or sentence has been reversed on direct appeal. . . “).

Therefore, pursuant to *Nieves*, DeCastro's first amendment retaliation claim fails as a matter of law unless DeCastro can present objective evidence he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been. Here, DeCastro cannot cite to objective evidence suggesting other individuals who illegally interfered with traffic stops and refused to step back and cease interfering with traffic stops were not arrested. As such, the LVMPD Defendants are entitled to summary judgment on DeCastro's First Amendment Retaliation claim.

c. Summary Judgment is Warranted on DeCastro's Selective Enforcement Claim.

DeCastro also asserts a selective enforcement claim, asserting Defendants selectively enforce laws against people with white lips, brown skin, people that expressed criticism towards law enforcement those recording police interactions, and those publicizing information on police misconduct. (ECF No. 61 at ¶112). However, DeCastro cannot offer evidence to support his conclusory statements.

It remains undisputed DeCastro interfered in a traffic stop, willfully and actively disobeyed lawful commands, resisted the efforts of the officers to effectuate his detention, and taunted and demeaned the officers. DeCastro’s behavior as demonstrated in the video exhibits gave the officers reasonable cause to believe the violation which DeCastro was arrested for would continue in the area if DeCastro was not arrested. (See ECF No. 61 at ¶24). In sum, DeCastro cannot present evidence to support the notion that individuals who engaged in substantially similar conduct were not arrested for obstruction. As a result, DeCastro cannot meet his burden at trial of proving a discriminatory effect, and the LVMPD Defendants are entitled to summary judgment on DeCastro’s selective enforcement claim.

Similarly, the video evidence in this case shows the Defendant Officers were not motivated by a discriminatory purpose and did not decide to enforce the law against DeCastro based on his exercise of his constitutional rights. DeCastro was told by numerous officers throughout the encounter, including Ofc. Bourque and Sgt. Torrey, the problem was not his filming, but rather his interference with a traffic stop and subsequent refusal to comply with lawful orders to stand back. DeCastro cannot present evidence to support the notion the Defendant Officers arrested him or took any action against him as a result of his exercise of his First Amendment rights. Thus, DeCastro cannot meet his burden at trial of proving a discriminatory purpose, and the LVMPD Defendants are entitled to summary judgment on DeCastro's selective enforcement claim.

d. **There Is No Clearly Established Law Preventing Officers from Arresting an Individual for Obstruction Under These Facts.**

The second prong of the qualified immunity analysis asks whether the law regarding the constitutional violation was clearly established. *Lal*, 746 F.3d at 1116. “It is the plaintiff who bears the burden of showing that the rights allegedly violated were clearly established,” *Shafer*, 868 F.3d at 1118 (internal quotation marks and citation omitted), and he must provide a case that demonstrates the unconstitutionality of the action “in light of the specific context of [this] case.” See *Mullenix*, 136 S.Ct. at 308.

There is no clearly established law that an officer arresting an individual for obstruction under these facts constitutes a First Amendment violation. Specifically, DeCastro interfered in a traffic stop, willfully and actively disobeyed lawful commands to stand back from the traffic stop and resisted the efforts of the officers to effectuate his detention, all while repeatedly asserting that he was in the right and demonstrating no contrition for his actions. Defendants are not aware of any case in which arresting an individual for obstruction under similar factual circumstances was found to be a First or Fourteenth Amendment violation. Accordingly, there is no clearly established law, and the Defendant Officers are entitled to qualified immunity on DeCastro's First Amendment Retaliation claims and First and Fourteenth Amendment selective enforcement claim.

C. SUMMARY JUDGMENT IS WARRANTED AS TO DECASTRO'S *MONELL* CLAIMS.

DeCastro alleges two causes of action which he identifies as *Monell* claims. DeCastro alleges a claim for *Monell* supervisor liability based on the subject incident (seventh cause of action), as well as a *Monell* failure to train claim (fifteenth cause of action). Because both claims are brought against Defendant LVMPD pursuant to *Monell*, defendants will analyze the claims in conjunction.

1. ***Monell Legal Standard.***

In *Monell*, the Court held that when a municipal policy of some nature is the cause of the unconstitutional actions taken by municipal employees, the municipality itself will be

1 liable. *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978). Liability only exists where
 2 the unconstitutional action “implements or executes a policy statement, ordinance,
 3 regulation, or decision officially adopted and promulgated” by municipal officers, or where
 4 the constitutional deprivation is visited pursuant to governmental “custom” even though
 5 such a “custom” has not received formal approval. *Id.* at 690-91. The Court defined
 6 “custom” as “persistent and widespread discriminatory practices by state officials.” *Id.* at
 7 691 (citing *Adickes v. S.H. Dress & Co.*, 398 U.S. 144, 167-68 (1970)).

8 The doctrine of respondeat superior does not apply to 42 U.S.C. § 1983 claims
 9 against municipalities. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 478 (1986) (citing
 10 *Monell*, 436 U.S. at 691). In other words, municipal liability is not established merely by
 11 showing that a municipal employee committed a constitutional tort while within the scope of
 12 employment. *Id.* at 478-79. For liability to attach to a municipality, a plaintiff must establish
 13 that the wrongful act complained of was somehow caused by the municipality. *Monell*, 436
 14 U.S. at 691-95. Such liability can be imposed only for injuries inflicted pursuant to a
 15 governmental “policy or custom.” *Monell*, 436 U.S. at 694. In addition, there must be shown
 16 to be an affirmative link between the policy or custom and the particular constitutional
 17 violation alleged. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823 (1985). The alleged
 18 policy or custom must be the “moving force” for the constitutional violation in order to
 19 establish liability under § 1983. *Polk County v. Dodson*, 454 U.S. 312, 326 (1981) (citing
 20 *Monell*, 436 U.S. at 694). Causation must be specific to the violation alleged, meaning that
 21 merely proving an unconstitutional policy, practice, or custom however loathsome, will not
 22 establish liability unless the specific injury alleged relates to the specific unconstitutional
 23 policy proved. *Board of County Comm'rs of Bryan City, Oklahoma vs. Brown*, 520 U.S.
 24 397, 404 (1997). Once each of these elements are met, a plaintiff must further prove that the
 25 unconstitutional policy that caused his injury was the result of something more than mere
 26 negligence on the part of the municipality, and was instead the result of “deliberate
 27 indifference” - a state of mind that requires a heightened level of culpability, even more than
 28 mere “indifference.” *Id.* at 411. In fact, the *Monell* standard for municipal liability has been

1 interpreted as more restrictive than “common law restrict[ions] [on] private employers’
 2 liability for punitive damages.” *See* David Jacks Achtenburg, Taking History Seriously:
 3 Municipal Liability Under 42 U.S.C. § 1983 and the Debate Over Respondeat Superior, 73
 4 Fordham L. Rev. 2183, 2191 (2005). Proof of a single incident is insufficient to establish a
 5 custom or policy. *Tuttle*, 471 U.S. at 821.

6 To prevail on *Monell* claim against LVMPD, DeCastro must (1) identify the
 7 challenged policy or custom; (2) show how the policy or custom is deficient; (3) prove how
 8 the policy or custom caused the plaintiff harm; and (4) demonstrate how the policy or
 9 custom amounted to deliberate indifference, i.e., show how the deficiency involved was
 10 obvious and the constitutional injury was likely to occur. *See Harvey v. City of South Lake*
 11 *Tahoe*, 2012 WL 1232420 (E.D. Cal. April 12, 2012). An actionable policy or custom is
 12 demonstrated by: (1) an “express policy that, when enforced, causes a constitutional
 13 deprivation.” *Baxter v. Vigo County School Corp.*, 26 F.3d 728, 735 (7th Cir. 1994); (2) a
 14 “widespread practice that, although not authorized by written law or express municipal
 15 policy, is so permanent and well settled to constitute a ‘custom or usage’ with the force of
 16 law;” *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127, 108 S.Ct. 915 (1988) (plurality
 17 opinion); or (3) constitutional injury caused by a person with “final policymaking authority.”
 18 *Id.* at 123.

19 **2. Summary Judgment is Warranted as to DeCastro’s *Monell***
 20 **Claims Against LVMPD (Seventh and Fifteenth COA).**

21 In the instant case, DeCastro pled a conclusory wish-list of unconstitutional customs,
 22 policies, or practices relating to LVMPD’s methods of effectuating arrests, use of force,
 23 searches and seizures, hiring and training practices, and more. (ECF No. 61 at ¶¶106, 151).
 24 However, there is no identification of a policy, that when enforced, caused the alleged
 25 constitutional violation. *See Baxter v. Vigo County School Corp.*, 26 F.3d 728, 735 (7th Cir.
 26 1994). Ironically, the only identification of actual policies are DeCastro’s identification of
 27 policies which when enforced, uphold and protect the constitutional rights of the citizenry.
 28 (ECF No. 61 at ¶¶21-27).

1 Because DeCastro has not raised triable issues as to whether the officers violated his
 2 constitutional rights, his §1983 *Monell* claims fail as a matter of law. *See City of Los*
 3 *Angeles v. Heller*, 475 U.S. 796, 799 (1986) (“If a person has suffered no constitutional
 4 injury at the hands of the individual police officer, the fact the departmental regulations
 5 might have *authorized* the use of constitutionally excessive force is quite beside the point”).

6 In addition, DeCastro cannot identify facts demonstrating any of the following: (1)
 7 an express policy that, when enforced, causes a constitutional deprivation; (2) a widespread
 8 practice that, although not authorized by written law or express municipal policy, is so
 9 permanent and well settled to constitute a ‘custom or usage’ with the force of law; or (3)
 10 constitutional injury caused by a person with “final policymaking authority.” Moreover,
 11 DeCastro cannot present evidence in support of deliberate indifference. Accordingly,
 12 DeCastro cannot meet his burden at trial of proving his *Monell* claims, and LVMPD
 13 Defendants are entitled to summary judgment on DeCastro’s *Monell* claims.

14 **D. SUMMARY JUDGMENT IS WARRANTED AS TO DECASTRO’S**
 15 **STATE LAW CLAIMS.**

16 **1. DeCastro Cannot Establish a Genuine Dispute of Material Fact as**
 17 **to his Defamation Claim (Fourth COA).**

18 To prevail on a defamation under Nevada law, a plaintiff must establish “(1) a false
 19 and defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged
 20 publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or
 21 presumed damages.” *Rosen v. Tarkanian*, 453 P.3d 1220, 1225 (Nev. 2019) (quotation
 22 omitted); *see also* Nev. Rev. Stat. § 200.510(1) (defining libel). With respect to a claim of
 23 defamation arising from a police report, such an instrument may form the basis of such a
 24 claim; however, there must be a specific statement contained in the police report that
 25 plaintiff states is false. *See Sykes v. Las Vegas Metropolitan Police Department*, Case No.
 2:21-cv-01479-RFB-DJA, 2021 WL 5799381, at *4 (D. Nev. December 3, 2021).

26 Here, DeCastro alleged the Defendant Officers shared false police reports with third
 27 parties. (ECF No. 61 at ¶91). However, the authentic video evidence demonstrates the police
 28 reports do not contain any false statement. (*Id.* at ¶¶68-69). Moreover, DeCastro cannot

1 identify evidence to support the element the police report was “published” to a third person
 2 in the absence of privilege. In the absence of a false and defamatory statement or an
 3 unprivileged publication, DeCastro’s defamation claim fails as a matter of law. Further,
 4 DeCastro has published numerous videos describing the incident and showing his videos.
 5 Thus, any claim he has been “defamed” is nonsense as he knowingly provoked the incident
 6 to gain internet fame.

7 **2. DeCastro Cannot Establish a Genuine Dispute of Material Fact as**
to his Battery Claim (Ninth COA).

8 This district has long recognized that the standard for battery by a police officer
 9 under Nevada law is the same as under a 42 U.S.C. § 1983 claim. *See, e.g., Ramirez v. City*
 10 *of Reno*, 925 F. Supp. 681, 691 (D. Nev. 1996) (“The standard for common-law assault and
 11 battery by a police officer thus mirrors the federal civil rights law standard: Liability
 12 attaches at the point at which the level of force used by a peace officer exceeds that which is
 13 objectively reasonable under the circumstances.”) Because summary judgment is warranted
 14 in relation to DeCastro’s excessive force under § 1983, summary judgment is also warranted
 15 for DeCastro’s state law battery claim.

16 **3. DeCastro Cannot Establish a Genuine Dispute of Material Fact as**
to his Negligence Claim (Eleventh COA).

17 DeCastro’s negligence claim has been dismissed with prejudice as to all theories
 18 besides his theory of excessive force. (ECF No. 44 at p.14). A claim for negligence requires
 19 that the plaintiff satisfy four elements: (1) an existing duty of care, (2) breach, (3) legal
 20 causation, and (4) damages. *Turner v. Mandalay Sports Entertainment, LLC*, 124 Nev. 213,
 21 217 (2008).

22 A plaintiff’s negligence claim cannot be based on an intentional act. *See Restatement*
 23 *(Second) of Torts § 282 (1965)*, cmt. d (stating that negligence “excludes conduct which
 24 creates liability because of the actor’s intention to invade a legally protected interest of the
 25 person injured or a third person”). Consequently, as a matter of law, there is no cause of
 26 action against a law enforcement officer for a negligent, unjustified use of excessive force.
 27 *See City of Miami v. Sanders*, 672 So. 2d 46, 48 (Fla. Dist. Ct. App. 1996) (“Hence, we

1 come to the inescapable conclusion that it is not possible to have a cause of action for
 2 ‘negligent’ use of excessive force because there is no such thing as the ‘negligent’
 3 commission of an ‘intentional tort.’); *Ryan v. Napier*, 425 P.3d 230 (Ariz. 2018) (a plaintiff
 4 “cannot assert a negligence claim based solely on an officer’s intentional use of physical
 5 force” because there is no cognizable claim for “negligent use of intentionally inflicted
 6 force.”); *Liberti v. City of Scottsdale*, 816 F.App’x. 89, 91 (9th Cir. 2020) (applying *Napier*
 7 to Arizona wrongful death actions); *Scales v. District of Columbia*, 973 A.2d 722, 731 (D.C.
 8 2009) (“[I]f, in a case involving the intentional use of force by police officers, a negligence
 9 count is to be submitted to the jury, that negligence must be distinctly pled and based upon
 10 at least one factual scenario that presents an aspect of negligence apart from the use of
 11 excessive force itself and violative of a distinct standard of care”). Therefore, in a police
 12 officer excessive force case, a plaintiff can only have a valid negligence claim if the plaintiff
 13 establishes negligence divorced from the actual force. *See Wells v. City of Las Vegas*, 2024
 14 WL 2028007, *16 (D. Nev. 2024) (predicting the Nevada Supreme Court would not
 15 recognize a negligence cause of action for an intentional tort).

16 Here, DeCastro’s negligence claim is based entirely upon the officers’ intentional
 17 use of force and, therefore, fails as a matter of law. Moreover, DeCastro cannot adduce facts
 18 in support of a negligence claim. Even if DeCastro could rely on a theory of intentional
 19 force to support a negligence claim, DeCastro lacks competent evidence of breach of any
 20 duty of care, causation, or damages. Accordingly, summary judgment on DeCastro’s
 21 negligence claim based on the Defendant Officers’ use of force is warranted.

22 **4. DeCastro Cannot Establish a Genuine Dispute of Material Fact as**
to his Civil Conspiracy Claim (Thirteenth COA).

23 DeCastro’s SAC alleges a claim for civil conspiracy based on a theory the Defendant
 24 Officers agreed to violate his civil rights, they acted according to a common plan and
 25 committed overt acts in furtherance of the conspiracy. (ECF No. 61 at ¶141).
 26

27 In order to prevail on a claim for civil conspiracy in Nevada, a plaintiff must
 28 establish two prongs: (1) two or more persons acting in concert intending to accomplish an

1 unlawful objective for the purpose of harming the plaintiff; and (2) the plaintiff sustained
 2 damages as a result of that action. *See Sutherland v. Gross*, 105 Nev. 192, 772 P.2d 1287,
 3 1290 (Nev. 1989).

4 Here, DeCastro alleges in a conclusory fashion the Defendant Officers conspired to
 5 violate his civil rights and cause him harm. (ECF No. 61 at ¶¶141-143). However, DeCastro
 6 has failed to adduce evidence in support of such a theory. DeCastro cannot present evidence
 7 which would establish that a conspiracy existed, nor the Defendant Officers acted with the
 8 purpose of harming him. Because DeCastro cannot offer competent evidence to establish the
 9 elements of a civil conspiracy claim, summary judgment in favor of the LVMPD Defendants
 10 is warranted as to the civil conspiracy cause of action.

11 In addition, even if DeCastro could present evidence to support a plausible civil
 12 conspiracy claim, the claim would still fail as a matter of law under the intra-corporate
 13 conspiracy doctrine. In *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 662 P.2d
 14 610, 622 (1983) the Nevada Supreme Court held “Agents and employees of a corporation
 15 cannot conspire with their corporate principal or employer when they act in their official
 16 capacities on behalf of the corporation and not as individuals for their individual advantage.”

17 *See also, Conleys Creek Ltd. P'ship. V. Smoky MountainCountry Club Prop. Owners Ass'n, Inc.*, 805 S.Ed.2d 147, 156 (N.C. App. 2017); *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 770-71 (1984) (applying the doctrine in an antitrust context holding
 18 that a parent corporation and its wholly owned subsidiary are incapable of conspiring under
 19 Section 1 of the Sherman Act); *Renner v. Wurdeman*, 231 Neb. 8, 434 N.W.2d 536, 542
 20 (1989) (“‘A corporation cannot conspire with an agent when that agent is *acting within the*
 21 *scope of his authority.*’ “ (citation omitted) (emphasis in original)); *Gray v. Marshall County Bd. of Educ.*, 179 W.Va. 282, 367 S.E.2d 751, 752 (1988) (“A corporation, as a single
 22 business entity, acts with one “mind” and the unilateral acts of a corporation will not satisfy
 23 the requirement of a [conspiracy].”).

24 Resultantly, summary judgment on DeCastro’s civil conspiracy claim is warranted.
 25
 26

1 **5. DeCastro Cannot Establish a Genuine Dispute of Material Fact as**
 2 **to his Abuse of Process Claim (Fourteenth COA).**

3 DeCastro's SAC alleges a claim for abuse of process based on his being arrested and
 4 charged with obstruction as a result of the subject incident. (ECF No. 61 at ¶¶146-148).

5 Under Nevada law, a plaintiff must establish two elements to prevail on an abuse of
 6 process claim: "(1) an ulterior purpose by the defendants other than resolving a legal
 7 dispute, and (2) a willful act in the use of the legal process not proper in the regular conduct
 8 of the proceeding." *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002) (citation
 9 omitted). However, the filing of a criminal complaint cannot be the willful act, a plaintiff
 10 must allege a willful act after filing to satisfy the second element. *Laxalt v. McClatchy*, 622
 11 F.Supp. 737, 751-52 (D. Nev. 1985); *Childs v. Selznick*, 281 P.3d 1161 (Nev. 2009) (noting
 12 that "'the mere filing of [a] complaint is insufficient to establish the tort of abuse of
 13 process'"') (quoting *Laxalt*, 622 F.Supp. at 752)) (unpublished).

14 DeCastro cannot identify evidence which could meet his burden at trial on this abuse
 15 of process claim. To prevail, DeCastro must identify a willful act *after* the filing of the
 16 criminal charges. No such act occurred, nor can DeCastro offer evidence to support the
 17 theory Defendants used the legal process to accomplish a goal other than for what it was
 18 created. *See, e.g., Donahoe v. Arpaio*, 869 F.Supp.2d 1020, 1060 (D. Ariz. 2012)
 19 (dismissing § 1983 abuse of process claim under Arizona law, which requires the same
 20 elements as Nevada, where the plaintiffs alleged their arrests and prosecutions were
 21 improper, but they did not allege that any specific judicial process was employed for a
 22 purpose other than for what it was designed.) For these reasons, DeCastro's abuse of process
 23 claim fails as a matter of law and summary judgment in favor of the LVMPD Defendants is
 24 warranted.

25 ///

26 ///

27 ///

V. CONCLUSION

Based on the foregoing, the LVMPD Defendants respectfully request this Court grant their Motion for Summary Judgment.

Dated this 14th day of June, 2024.

MARQUIS AURBACH

By /s/ Craig R. Anderson
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **DEFENDANTS LVMPD, OFC. TORREY, OFC. BOURQUE, OFC. DINGLE, OFC. SORENSEN, OFC. SANDOVAL AND OFC. DOOLITTLE'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 14th day of June, 2024.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants: n/a

/s/ Sherri Mong
an employee of Marquis Aurbach

**DECLARATION OF CRAIG R. ANDERSON, ESQ. IN SUPPORT OF
DEFENDANTS LVMPD, SGT. TORREY, OFC. BOURQUE, OFC. DINGLE, OFC.
SORENSEN, OFC. SANDOVAL AND OFC. DOOLITTLE'S MOTION FOR
SUMMARY JUDGMENT**

I, Craig R. Anderson, Esq., hereby declares as follows:

1. I am over the age of eighteen (18) years of age and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a Court of law and will so testify if called upon.

2. I am counsel for Defendants Las Vegas Metropolitan Police Department (“LVMPD”), Sgt. Torrey, Ofc. Bourque, Ofc. Dingle, Ofc. Sorenson, Ofc. Sandoval and Ofc. Doolittle (“LVMPD Defendants”) in the case of *DeCastro v. LVMPD, et al.*, Case No. 2:23-cv-00580-APG-EJY.

3. This Declaration is submitted to the Court to authenticate exhibits attached to the LVMPD Defendants' Motion for Summary Judgment.

4. Attached as Exhibit A is the body worn camera footage of Ofc. Bourque. It is authenticated in the declaration of Ofc. Bourque attached as Exhibit G.

5. Attached as Exhibit B is the body worn camera footage of Ofc. Sandoval. It is authenticated in the declaration of Ofc. Sandoval attached as Exhibit G.

6. Attached as Exhibit C is the body worn camera footage of Ofc. Dingle. It is authenticated in the declaration of Ofc. Dingle attached as Exhibit G.

7. Attached as Exhibit D is the body worn camera footage of Ofc. Sorenson. It is authenticated in the declaration of Ofc. Sorenson attached as Exhibit G.

8. Attached as Exhibit E is the body worn camera footage of Ofc. Doolittle. It is authenticated in the declaration of Ofc. Doolittle attached as Exhibit G.

9. Attached as Exhibit F is the body worn camera footage of Sgt. Torrey. It is authenticated in the declaration of Sgt. Torrey attached as Exhibit G.

10. Attached as Exhibit G are the declarations of Ofc. Bourque, Ofc. Sandoval, Ofc. Dingle, Ofc. Sorenson, Ofc. Doolittle, and Sgt. Torrey, authenticating the body worn

1 camera footage. The signed declarations of Ofc. Bourque, Ofc. Sandoval, Ofc. Sorenson,
2 Ofc. Doolittle, and Sgt. Torrey were previously attached as an exhibit to LVMPD
3 Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (ECF
4 No. 66).

5 11. Attached as Exhibit H is DeCastro's YouTube video detailing the subject
6 incident, which is comprised of his own video footage, clips of BWC footage, and
7 DeCastro's overlayed text commentary. It is a true and accurate copy of DeCastro's
8 YouTube video and its authenticity is not in dispute.

9 12. Attached as Exhibit I is a YouTube video uploaded by another YouTube
10 creator who has uploaded portions of DeCastro's own videos wherein DeCastro has
11 discussed the subject incident. It is a true and accurate copy of the subject YouTube video
12 and the authenticity of DeCastro's own statements is not in dispute.

13 13. Attached as Exhibit J is Ofc. Bourque's Blue Team Report. It is an authentic
14 public record prepared by Ofc. Bourque contemporaneous with and immediately after the
15 subject incident and arrest of Plaintiff.

16 14. Attached as Exhibit K is DeCastro's March 15, 2023 citation. It is a public
17 record and is authenticated by the signatures of Ofc. Bourque and Plaintiff.

18 15. Attached as Exhibit L is Case No. 23-CR-013015 Register of Actions. It is
19 the docket for Plaintiff's criminal case stemming from the incident which is the subject of
20 this action. Exhibit L is an authentic public record prepared by the Clark County Justice
21 Court.

22 16. Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of
23 the State of Nevada that the foregoing is true and correct.

24 Dated this 14th day of June, 2024.

25 *s/Craig R. Anderson*
26 Craig R. Anderson
27
28

Exhibit A – F
Flash Drive Containing Body
Worn Camera Video Evidence
of Defendant Officers

Exhibit G

Declarations of Defendant Officers Authenticating Body Worn Camera Footage

1 **DECLARATION OF OFC. BRANDON BOURQUE IN SUPPORT OF LVMPD**
2 **DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED**
3 **COMPLAINT**

4 I, Ofc. Brandon Bourque, hereby declare and say:

5 1. I am over the age of eighteen (18) years of age and have personal knowledge
6 of the facts stated herein, except for those stated upon information and belief, and as to
7 those, I believe them to be true. I am competent to testify as to the facts stated herein in a
Court of law and will so testify if called upon.

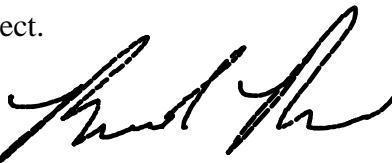
8 2. This Declaration is brought to authenticate certain exhibits and court filings
9 on behalf of the Defendants in the case of *Jose DeCastro v. LVMPD, et al.*, Case No. 2:23-
10 cv-00580-APG-EJY.

11 3. I am currently a Police Officer with the Las Vegas Metropolitan Police
12 Department. I have personal knowledge regarding the incident which is the subject of
13 DeCastro's Second Amended Complaint.

14 4. I have reviewed my body worn camera footage that is attached to the
15 Defendants' current Motion. I can confirm that it is a true, accurate, and complete copy of
16 what my body worn camera captured on the day of the subject incident. The footage has not
17 been modified, edited, or otherwise changed.

18 5. Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of
19 the State of Nevada that the foregoing is true and correct.

20 Dated this __ day of December, 2023.



21 _____
22 Brandon Bourque

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**DECLARATION OF OFC. JESSE SANDOVAL IN SUPPORT OF LVMPD
DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED
COMPLAINT**

I, Ofc. Jesse Sandoval, hereby declare and say:

4 1. I am over the age of eighteen (18) years of age and have personal knowledge
5 of the facts stated herein, except for those stated upon information and belief, and as to
6 those, I believe them to be true. I am competent to testify as to the facts stated herein in a
7 Court of law and will so testify if called upon.

8 2. This Declaration is brought to authenticate certain exhibits and court filings
9 on behalf of the Defendants in the case of *Jose DeCastro v. LVMPD, et al.*, Case No. 2:23-
10 cv-00580-APG-EJY.

11 3. I am currently a Police Officer with the Las Vegas Metropolitan Police
12 Department. I have personal knowledge regarding the incident which is the subject of
13 DeCastro's Second Amended Complaint.

14 4. I have reviewed my body worn camera footage that is attached to the
15 Defendants' current Motion. I can confirm that it is a true, accurate, and complete copy of
16 what my body worn camera captured on the day of the subject incident. The footage has not
17 been modified, edited, or otherwise changed.

18 5. Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of
19 the State of Nevada that the foregoing is true and correct.

Dated this 29th day of January, 2023.

DocuSigned by:

94DDDB20143B475...

1 **DECLARATION OF OFC. CHADLY DINGLE IN SUPPORT OF LVMPD**
2 **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

3 I, Ofc. Chadly Dingle, hereby declare and say:

4 1. I am over the age of eighteen (18) years of age and have personal knowledge
5 of the facts stated herein, except for those stated upon information and belief, and as to
6 those, I believe them to be true. I am competent to testify as to the facts stated herein in a
7 Court of law and will so testify if called upon.

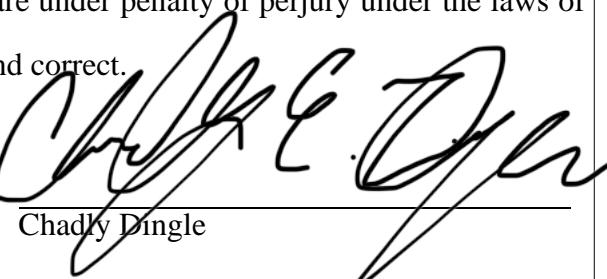
8 2. This Declaration is brought to authenticate certain exhibits and court filings
9 on behalf of the LVMPD Defendants in the case of *Jose DeCastro v. LVMPD, et al.*, Case
10 No. 2:23-cv-00580-APG-EJY.

11 3. I am currently a Police Officer with the Las Vegas Metropolitan Police
12 Department. I have personal knowledge regarding the incident which is the subject of
13 DeCastro's Second Amended Complaint.

14 4. I have reviewed my body worn camera footage that is attached to the
15 LVMPD Defendants' current Motion. I can confirm that it is a true, accurate, and complete
16 copy of what my body worn camera captured on the day of the subject incident. I was
17 wearing my body camera upside down during the subject incident, so the footage has been
18 inverted for ease of viewing. The footage has not otherwise been modified, edited, or
19 otherwise changed.

20 5. Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of
21 the State of Nevada that the foregoing is true and correct.

22 Dated this 13 day of June, 2024.



23 _____
24 Chadly Dingle
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**DECLARATION OF OFC. BRANDON SORENSEN IN SUPPORT OF LVMPD
DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED
COMPLAINT**

I, Ofc. Brandon Sorenson, hereby declare and say:

4 1. I am over the age of eighteen (18) years of age and have personal knowledge
5 of the facts stated herein, except for those stated upon information and belief, and as to
6 those, I believe them to be true. I am competent to testify as to the facts stated herein in a
7 Court of law and will so testify if called upon.

8 2. This Declaration is brought to authenticate certain exhibits and court filings
9 on behalf of the Defendants in the case of *Jose DeCastro v. LVMPD, et al.*, Case No. 2:23-
10 cv-00580-APG-EJY.

11 3. I am currently a Police Officer with the Las Vegas Metropolitan Police
12 Department. I have personal knowledge regarding the incident which is the subject of
13 DeCastro's Second Amended Complaint.

14 4. I have reviewed my body worn camera footage that is attached to the
15 Defendants' current Motion. I can confirm that it is a true, accurate, and complete copy of
16 what my body worn camera captured on the day of the subject incident. The footage has not
17 been modified, edited, or otherwise changed.

18 5. Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of
19 the State of Nevada that the foregoing is true and correct.

20 Dated this 23 day of December, 2023.

and correct.


1 **DECLARATION OF OFC. CLINTON DOOLITTLE IN SUPPORT OF LVMPD**
2 **DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED**
3 **COMPLAINT**

4 I, Ofc. Clinton Doolittle, hereby declare and say:

5 1. I am over the age of eighteen (18) years of age and have personal knowledge
6 of the facts stated herein, except for those stated upon information and belief, and as to
7 those, I believe them to be true. I am competent to testify as to the facts stated herein in a
Court of law and will so testify if called upon.

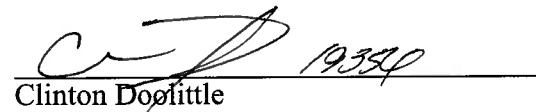
8 2. This Declaration is brought to authenticate certain exhibits and court filings
9 on behalf of the Defendants in the case of *Jose DeCastro v. LVMPD, et al.*, Case No. 2:23-
10 cv-00580-APG-EJY.

11 3. I am currently a Police Officer with the Las Vegas Metropolitan Police
12 Department. I have personal knowledge regarding the incident which is the subject of
13 DeCastro's Second Amended Complaint.

14 4. I have reviewed my body worn camera footage that is attached to the
15 Defendants' current Motion. I can confirm that it is a true, accurate, and complete copy of
16 what my body worn camera captured on the day of the subject incident. The footage has not
17 been modified, edited, or otherwise changed.

18 5. Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of
19 the State of Nevada that the foregoing is true and correct.

20 Dated this 12 day of December, 2023.

21 
Clinton Doolittle

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**DECLARATION OF SGT. ERLAND TORREY IN SUPPORT OF LVMPD
DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED
COMPLAINT**

I, Sgt. Erland Torrey, hereby declare and say:

4 1. I am over the age of eighteen (18) years of age and have personal knowledge
5 of the facts stated herein, except for those stated upon information and belief, and as to
6 those, I believe them to be true. I am competent to testify as to the facts stated herein in a
7 Court of law and will so testify if called upon.

8 2. This Declaration is brought to authenticate certain exhibits and court filings
9 on behalf of the Defendants in the case of *Jose DeCastro v. LVMPD, et al.*, Case No. 2:23-
10 cv-00580-APG-EJY.

11 3. I am currently a Sergeant with the Las Vegas Metropolitan Police
12 Department. I have personal knowledge regarding the incident which is the subject of
13 DeCastro's Second Amended Complaint.

14 4. I have reviewed my body worn camera footage that is attached to the
15 Defendants' current Motion. I can confirm that it is a true, accurate, and complete copy of
16 what my body worn camera captured on the day of the subject incident. The footage has not
17 been modified, edited, or otherwise changed.

18 5. Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of
19 the State of Nevada that the foregoing is true and correct.

20 Dated this 7th day of December, 2023.


Erland Torrey

Exhibits H and I

Flash Drive containing (1) DeCastro's YouTube video dealing with the subject incident, which is comprised of his own video footage, clips of BWC footage, and DeCastro's overlayed text commentary; and (2) Separate YouTube creator with uploaded portions of DeCastro's own videos discussing the subject incident

Exhibit J

Ofc. Bourque's Report

Case No:

Involved citizen:

Josh Risley

Linked phone(s):

[REDACTED]

Employees involved:

PO II (FTEP) Branden C Bourque [15725]

Employee current info:

Division: West Community Policing
Bureau: Summerlin Area Command
Section:

Snapshot - employee information at time of incident:

P Number: 15725
Division: West Community Policing
Bureau: Summerlin Area Command
Section:
Shift: 3
Rank/title: PO II
Age: 30 Years of employment: 7 Years with unit: 0
Off duty: Unk Off duty employed: Unk

Allegations:

5.100-Search and Seizure
Apr 12, 2023 - No Policy Violation

Employee witnesses:

PO I Chadly E Dingle [19359]

Employee current info:

Division: Tourist Safety
Bureau: Convention Center Area Command
Section:

PO SGT (FTEP) Erland J Torrey [9804]

Employee current info:

Division: West Community Policing
Bureau: Summerlin Area Command
Section:

Summary:

COM stated he watched the YouTube video and stated that officer arrested the person who was just standing there filming even when he was 15 ft away. COM states the officer made contact with the filer and escalated the situation and then detained him.

Investigative tasks:

Due dt Done dt Type

Mar 26, 2023 Mar 16, 2023 Preliminary Case Notes

Assigned To: PO-2 JAYSON OSBORNE

*****Summary of Complaint*****

COM stated that he watched the Youtube video and stated that the officer arrested the person who was just standing there filming even when he was 15 ft away. COM stated the officer made contact with the filmer and escalated the situation and then detained him.

*****CAD Review/Research*****

IAB located an incident on March 15, 2023, at approximately 1617 hours under LVMPD Event Number LLV230300064617. The details are as follows:

03/15/2023 16:17:54 Incident Created (Field Initiated)

03/15/2023 16:17:54 TARGET

03/15/2023 16:29:10 3R1/ REQ ANOTHER UNIT SUBJ TRYING TO PULL AWAY C/RED 3R1/NEG C/RED CHAN CL

03/15/2023 16:39:35 NAM/DECASTRO,JOSE M SEX/M RAC/U POB/CA DOB/ [REDACTED] HGT/507 WGT/165 EYE/BRO HAI/BRO FBI/80486VA7 FPC/POPIP0221918P0181819 SOC/556332535

03/15/2023 16:45:29 NAM/ DECASTRO,JOSE MARIA DOB/ [REDACTED] SOC/ [REDACTED] SID/ FBI/ 80486VA7 OLN/ SEX/ M RAC/ U HGT/ 508 WGT/ 168 HAI/ BRO EYE/ GRN SKN/ ETN/ H AGE/ 48

03/15/2023 16:59:15 3R13TV/ REQ ANI CONT DOG TERRIER SMALL

03/15/2023 17:00:40 SMALL DOG LEFT UNATTENDED IN VEHICLE PARKING LOT ORIG: LVM290Q3 LVM19356 CJIS:RQ 03/15/2023-

16:56:46 RESP: NLETS (NV004C962711) NLETS:RR 03/15/2023-16:56:47 RR.CALIC0000. 16:56 03/15/2023 35957 16:56 03/15/2023

19639 NV00290Q3 *NV56EF99D7 TXT NLETS TEXT RESPONSE DATE: 03/15/23 TIME: 16:56 INSURANCE INFORMATION UNKNOWN REG VALID FROM: 11/24/22 TO 11/24/23 LIC#:8TTE796 YRMD:21 MAKE:HOND BTM :SV VIN :5FNRL6H76MB008484 R/O :DECASTRO JOSE

MARIA, [REDACTED] :19 ZIP#: [REDACTED] SOLD:00/00/20 RCID:12/07/22 OCID:12/07/22 LOCD:Z L/O

:CERTIFIED FCU, [REDACTED] ZIP : [REDACTED]

03/15/2023 17:00:42 CHARGES: 1) OBSTRUCTING PUBLIC OFFICER - SUBJECT WAS UNRELATED TO 467 AND WALKED UP TO THE DETAINED DRIVER'S WINDOW IN THE PARKING LOT. THE SUBJECT BEGAN ENGAGING WITH THE SUBJECT AND WAS ORDERED TO BACK AWAY FROM THE CAR STOP FOR THE DRIVER'S PRIVACY. THE SUBJECT REFUSED MULTIPLE COMMANDS TO DISENGAGE, BUT WAS ALSO TOLD THAT HE COULD CONTINUE VIDEO RECORDING AS LONG AS HE BACKED UP. THE SUBJECT REFUSED AND WAS TOLD THAT HE WAS DETAINED FOR OBSTRUCTING THE ORIGINAL VEHICLE STOP. 2) AFTER ADVISING THE SUBJECT THAT HE WAS BEING DETAINED AND WAS ORDERED TO STEP IN FRONT OF THE MARKED PATROL VEHICLE HE REFUSED MULTIPLE TIMES. OFFICERS GRABBED TOWARD THE SUBJECT'S ARMS TO ESCORT HIM BACK TO THE PATROL VEHICLE AND HE PHYSICALLY PULLED AWAY AND RESISTED. BWC AVAILABLE. WHILE RESISTING ARREST THE SUBJECT HIT THE POWER BUTTON TO MY BWC WHICH KNOCKED IT TO THE OFF POSITION. THAT PORTION SHOULD BE VISIBLE FROM THE ORIGINAL 467 BWC. INTENT IS NOT BELIEVED TO BE COMBATIVE WITH OFFICERS, BUT TO RESIST ARREST.

03/15/2023 17:13:10 7R11: SUBJECT WAS INFORMED MULTIPLE TIME TO FACE THE PATROL VEHICLE, AT WHICH TIME THE SUBJECT AFTER DUE NOTICE FACED AWAY FROM THE VEHICLE. SUBJECT WAS OBSERVED TO HAVE DIALATED PUPILS, DRIED LIPS, AND ERATIC SPEECH WHICH ARE ALL OBSERVED TO BE CONSISTANT WITH A PERSON UNDER THE INFLENCE OF A NARCOTIC. SUBJECT TOLD ME TO SUCK HIS "COCK" AND "PENIS" AT WHICH TIME HE WAS GRABBED BY HIS LEFT ARM TO PREVENT THE SUBJECT FROM FALLING AND HURTING HIMSELF WHILE IN HANDCUFFS.

03/15/2023 17:53:48 DECASTRO STATED THAT THIS IS WHAT HE DOES, THAT HE GOES AROUND THE COUNTRY SUING POLICE DEPARTMENTS. IT APPEARS FROM THE BODY CAM THAT DECASTRO WAS TRYING TO BAIT OFFICERS IN HOPING A CONFRONTATION WOULD ENSUE. DECASTRO GOT TO WITHIN 5 FEET OF THE DRIVERS SIDE DOOR OF THE DRIVER. HE WAS INFORMED BY THE OFFICER THAT HE WAS INTERFERING WITH HIS CAR STOP AND THAT HE COULD FILM BUT HAD TO GET BACK. DECASTRO REFUSED TO MOVE AND AFTER SEVERAL COMMANDS WAS TOLD THAT HE WAS BEING DETAINED FOR OBSTRUCTING. DECASTRO CAN THEN BE SEEN RESISTING AND PULLING AWAY FROM OFFICERS AND CONTINUED TO REFUSE COMMANDS. DECASTRO TOLD ME THAT HE WANTED TO HAVE A SIT DOWN WITH THE DEPARTMENT TO DISCUSS WHAT WAS ALLOWED. I INFORMED HIM THAT ALL HE HAS TO DO IS NOT GET INVOLVED IN A STOP BY PUTTING HIMSELF IN THE MIDDLE AND WHEN TOLD TO MOVE BACK SO THAT THE OFFICER CAN CONDUCT THE STOP THEN LISTEN TO COMMANDS. DECASTRO WAS SO CLOSE THAT OFFICER BOURQUE WOULD HAVE GIVEN HIS BACK TO DECASTRO IN ORDER TO APPROACH THE DRIVER BECAUSE HE REFUSED TO MOVE. DECASTRO THEN CLAIMED THAT OFFICER SANDOVAL WAS TORTURING HIM BY SQUEEZING HIS ARM. I REVIEWED BODY CAMERA AND SANDOVAL IS FOLLOWING POLICY AND IS HOLDING ONTO HIM WITH ONE ARM AS DECASTRO CONTINUES TO TURN TOWARDS HIM AND NOT LISTEN TO COMMANDS. DECASTRO REQUESTED THAT HIS NEPHEW COME AND GET HIS DOG AS IT WAS LEFT IN HIS VEHICLE. THE DOG WAS RELEASED TO HIS NEPHEW MASON.

03/15/2023 19:18:46 CLASS 2 CITATION - ECITATION # LVM1148005

03/15/2023 21:22:20 BRAZOS STOP DATA COMPLETED FOR ORIGINAL TRAFFIC STOP

03/15/2023 21:22:46 DISPO D:CLASS II CITATION

A Body Worn Camera breakdown was completed and attached to IAPro under the video link.

*****IAB contact w/ COM*****

*****Summary of Investigation w/ preliminary recommendations*****

On March 15, 2023, at approximately 1617 hours, Officer B. Bourque P#15725, conducted a vehicle stop under LVMPD Event Number LLV230300064617 at [REDACTED] 7.

During the stop, while Officer Bourque was conducting a record check, an unknown male who was not associated with the initial stop, later identified as Jose Maria DeCastro, approached the driver of the vehicle stopped by Officer Bourque. Officer Bourque exited his vehicle and told the male not to engage with the driver and to back away. DeCastro was immediately confrontational and stated he was only 10 feet away and was recording. Officer Bourque told DeCastro that he was allowed to record but directed him to move away from the driver to give her privacy. DeCastro refused and stated he was a Constitutional Law Scholar and a member of the press. He then told Officer Bourque that his name would be on a lawsuit. DeCastro told Officer Bourque, "Mind your own fucking business" and "Go get in your car and do your job, little doggy." Officer Bourque told DeCastro he was being detained.

Officer Bourque told the vehicle's driver she was free to leave and then asked for additional units due to DeCastro refusing to obey his lawful commands. Officer Bourque told DeCastro he was being detained and instructed him to the front of the patrol vehicle. DeCastro refused and told Officer Bourque not to touch him. DeCastro eventually agreed to walk to the patrol vehicle after Officer Bourque instructed him to do so multiple times. Officer Bourque then instructed DeCastro to place his phone on the hood of the patrol vehicle, which DeCastro refused to do. DeCastro stopped walking to the patrol vehicle, and as Officer Bourque attempted to turn DeCastro around by placing a hand on his shoulder, DeCastro pushed Officer Bourque's arm away. Officer Bourque stated, "Oh, now you're going to put your hands on me?" He then grabbed DeCastro and escorted him to the front of the vehicle.

Officer C. Dingle P#19359 arrived to assist Officer Bourque. DeCastro refused to turn around and face the patrol vehicle and continually pulled his hands away while officers attempted to gain control of him. While officers placed DeCastro in handcuffs, he complained about his shoulder. Officers accommodated DeCastro by putting him in two sets of handcuffs.

After being detained, officers asked DeCastro for his identifying information, which DeCastro initially refused but eventually gave. While in custody, DeCastro stated that he sued cops all over the country. While speaking with officers, DeCastro continually attempted to bait them. DeCastro was placed in the patrol vehicle and waited for a supervisor.

Sergeant T. Erland P#9804 arrived and spoke with DeCastro. Sergeant Erland explained to DeCastro why he was detained. DeCastro alleged he was tortured by Officer Bourque for 20 minutes and was placed in "torture cuffs" for no reason. DeCastro stated he should not be arrested and asked Sergeant Erland if they could work something out where he would go free. DeCastro told Sergeant Erland he had five lawsuits filed against officers and did not want to make it six, but he would if he had to. Sergeant Erland explained that he did not think a simple citation would fix the problem. Sergeant Erland explained that DeCastro was in his right to record, but he needed to obey the officer's commands to move and give other people privacy. DeCastro was taken to CCDC on a class two citation.

IAB reviewed BWC of the incident.

Officer Bourque acted professionally throughout the entirety of the incident. Officer Bourque gave DeCastro lawful orders to move away from the vehicle he stopped, but DeCastro refused. Officer Bourque informed DeCastro he was allowed to film but needed to do so elsewhere.

DeCastro was less than 10 feet away from the driver's door of the vehicle Officer Bourque stopped. If Officer Bourque had allowed DeCastro to stay where he was, Officer Bourque would be in a dangerous position.

Officer Bourque correctly addressed the situation and gave DeCastro ample instruction and warning. Officer Bourque did not go hands-on with DeCastro until DeCastro pushed Officer Bourque's hand away. Officer Bourque then physically grabbed DeCastro by his shirt and escorted him to the front of the patrol vehicle. Officer Bourque used an appropriate level of force to control DeCastro. DeCastro was obstructive the entire time he was in contact with officers. While being placed in handcuffs, DeCastro claimed he had an injury to his left

DeCastro was trying to bait officers into a confrontation with comments he was making and how he was resisting. DeCastro also stated, "What I do is I sue cops. That's what I do."

Officer Bourque acted within policy.

Mar 26, 2023 Mar 23, 2023 Preliminary Sergeant Review/Rec

Assigned To: SGT THEODORE WEIRAUCH

03/14/23 –

I Sgt. Weirauch have reviewed this SOC and the preliminary investigation conducted by Det. Osborne. The COM alleged the following:

- COM stated he watched the Youtube video and stated that the officer arrested the person who was just standing there filming even when he was 15 ft away.
- COM stated the officer contacted the person filming and escalated the situation and then detained him.

Det Osbourne reviewed TCR, BWC, ICR, and CAD.

Det. Osbourne observed on BWC that the Officer told the person filming that he was allowed to keep filming but needed to back up. He explained that the person he had stopped needed some privacy. The male recording stated that "I am at least 10 feet away, Officer... I am a constitutional law scholar."

The person filming then said "Mind your own fucking business. Mind your business... I'm a member of the press. Go get in your car and do your job, little doggie!"

This action, and not moving back like instructed to do so, hindered, and delayed the Officer's traffic stop.

Now investigating the crime of obstructing, the Officer can be seen on BWC instructing the person filming numerous times to follow his instructions. Eventually the Person filming pushes the officer's hands away. With the help of another officer the male is taken into custody.

Det Osbourne determined that the Officer who made the arrest had P/C for both Obstructing and resisting Arrest.

After also reviewing the case I concur with Det Osbourne's investigation. It should also be noted that the male was clearly

There was NPV. I recommend close on SOC – No Policy Violation. T7465W
T7465W

Jun 14, 2023 Mar 16, 2023 Case Notes

Assigned To: PO-2 JAYSON OSBORNE

3/16/23

Prelim completed. BWC completed. J131480
attempted to call COM at approximately 1600 hours. No answer. VM left. J131480

Jun 14, 2023 Apr 12, 2023 Dispo Rpt / email to Chain

Assigned To: SR LAW ENF SUPPORT TECH NANCY FOX

SE and chain NPV; closed on SOC

Jun 14, 2023 Apr 07, 2023 Lieutenant Review/Decision

Assigned To: PO LT (A-2) Joshua Younger

I reviewed the preliminary investigation completed by Detective Osborne and the review by Sergeant Weirauch. I agree with closing this NPV based on their investigation. J12997Y.

Jun 14, 2023 Apr 12, 2023 Letter to Complainant (Dispo)

Assigned To: SR LAW ENF SUPPORT TECH NANCY FOX

No address for COM, dispo not sent

Jun 14, 2023 Mar 16, 2023 BWC Review

Assigned To: PO-2 JAYSON OSBORNE

attached to IAPro.

When/where:

Date/time occurred: Mar 15, 2023

Incident Location: Flamingo / Grand Canyon Las Vegas NV 89147

Linked files:

[SE Dispo NPV Letter - Branden Bourque \(docx\)](#)
[CADIncidentRecall - 2023-03-16T110856_373 \(pdf\)](#)
[DOAR \(pdf\)](#)
[ICR \(pdf\)](#)
[Jose Decastro - Scope \(pdf\)](#)
[LLV230300064617 - Citation \(pdf\)](#)
[Officer Bourque - BWC Breakdown \(pdf\)](#)
[Officer Bourque P#15725 - BWC \(\)](#)
[Officer Chedly Dingle P#1935 - BWC \(\)](#)
[Officer Dingle - BWC Breakdown \(pdf\)](#)
[Register of Actions \(pdf\)](#)
[Sergeant Erland P#9804 - BWC \(\)](#)
[Sgt_ Erland - BWC Breakdown \(pdf\)](#)
[TBA2023-0253 \(pdf\)](#)
[TCR \(pdf\)](#)
[YouTube Video \(mp4\)](#)

Associated Case Nos:

TBA2023-0253 TBA Number

LLV230300064617 LVMPD Event Number

Status/assignment information:

Status: Completed Priority: Low

Opened: 03/16/2023 Assigned: 03/16/2023 Due: 06/14/2023 Completed: 04/12/2023

Disposition: Closed on SOC

Unit assigned: IAB Team 8

Handled at field/unit level: No

Investigator assign: PO-2 JAYSON OSBORNE

Supervisor assign: SGT PAUL WOJCIK

Source of information: Phone

Organizational component(s):

Division: West Community Policing

Bureau: Summerlin Area Command

Squad: SU32

Shift: 3

Entered by: **LAW ENF SUPPORT TECH KESHA MCMAHON** on Mar 16, 2023 at 09:43

Exhibit K

DeCastro's 3/15/23 citation

Violation Date/Time: 03/15/2023 1629

Issue Date/Time: 03/15/2023 1629

In the Justice/Municipal Court LAS VEGAS JUSTICE COURT

CRIMINAL

VIOLATION(S)

1)	MUNI/NRS 197.190	NOC 57040
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CITATION : Obstructing a Public Officer

TO WIT

DID WILLFULLY HINDER, DELAY OR OBSTRUCT A PUBLIC OFFICER, OFFICER B. BOURQUE P#15725 WITH THE LVMPD, IN THE LAWFUL DISCHARGE OF HIS OFFICIAL DUTIES INVESTIGATING A TRAFFIC VIOLATION ON A TRAFFIC STOP BY WALKING UP TO AND ENGAGING WITH THE DRIVER WHO HE HAD NO INVOLVEMENT WITH. ADDITIONALLY, DECASTRO WAS WARNED TO BACK AWAY FROM THE STOP AND REFUSED SEVERAL TIMES AFTER IT WAS EXPLAINED THAT HE WOULD OTHERWISE BE DETAINED FOR OBSTRUCTING.

2)	MUNI/NRS 199.280	NOC 52990
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CITATION : Resist a Police Officer or Resist Arrest

TO WIT

DID WILLFULLY RESIST A PUBLIC OFFICER, B. BOURQUE P#15725 WITH THE LVMPD, IN THE LAWFUL DISCHARGE OF HIS/HER DUTIES INVESTIGATING A TRAFFIC STOP ON A TRAFFIC VIOLATION, BY TENSING UP HIS ARMS AND BODY AFTER BEING DETAINED. DECASTRO WAS GIVEN SEVERAL OPPORTUNITIES TO FOLLOW LAWFUL COMMANDS BUT HE REFUSED AND RESISTED OFFICERS WHILE THEY ATTEMPTED TO DETAIN HIM IN HANDCUFFS.

Failure to comply with this complaint or future dates relating to this complaint will constitute a separate offense

Court: LAS VEGAS JUSTICE COURT

Address: 200 Lewis Avenue First Floor, Las Vegas, NV 89101

Same as Physical

Phone: 702-671-3444

<https://www.lasvegasjusticecourt.us/>

You are hereby ordered to appear to answer the above charges on the day and time

VOID

Court Mandatory Interpreter needed Language:

Juvenile: No	<input type="checkbox"/> School Zone	<input type="checkbox"/> Radar
Type: NON TRAFFIC	Grant: NONE	Confirm:

PEDESTRIAN

LAST NAME DECASTRO	FIRST JOSE	MIDDLE
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RESIDENCE ADDRESS [REDACTED]	PHONE
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CITY [REDACTED]	STATE NV	ZIP CODE 89074
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DRIVER LICENSE NUMBER [REDACTED]1	DL CLASS C	DL STATE NV	CDL No
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DOB [REDACTED]	AGE 48	SEX M	RACE W	HEIGHT 509	WEIGHT 180	EYE GRN	HAIR BRO
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RESTRICTIONS None	ENDORSEMENTS None/Not Applicable
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VEHICLE INFORMATION

LICENSE PLATE [REDACTED]	STATE NV	REG. EXP. [REDACTED]	COLOR [REDACTED]
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MAKE [REDACTED]	MODEL [REDACTED]	TYPE [REDACTED]
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VIN [REDACTED]	YEAR [REDACTED]	CMV No	HAZMAT No
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TRAILER PLATE [REDACTED]	TRAILER STATE NV	VEH IS TRAILER No	US DOT# [REDACTED]
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CURRENT PROOF OF INSURANCE? **No** INS. CARD EXP. DATE:REGISTERED OWNER SAME AS SUS?:**NO**NAME
[REDACTED]ADDRESS
NV

LOCATION

4155 S GRAND CANYON DR

TYPE OF STOP	POST STOP SPEED (MPH)	ROAD SURFACE	CASE NO.
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230300064617

CONSTR. ZONE No	SCHOOL ZONE No	ACCIDENT No
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DIR OF TRAV R3	BEAT/AREA Clear	COND/WEATHER	TRAFFIC
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SPEED DETERMINED	ROAD Dry
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ADDITIONAL INFORMATION

NAME
[REDACTED]ADDRESS
[REDACTED] PHONE
[REDACTED]CITY
[REDACTED] STATE
NV ZIP CODE
[REDACTED]

OFFICER INFORMATION

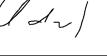
B. BOURQUE 15725

UNIT
[REDACTED]

I certify (or Declare) under penalty of perjury under the laws of the state of Nevada that I have reasonable grounds/probable cause to believe and do believe that above named person committed the above offense(s) contrary to law.

Officer Signature: Complainant Signature: 

Without admitting having committed the above offense(s), I hereby promise to respond as directed on this notice and waive my right to be taken immediately before a magistrate (NRS 484.799 and NRS 484.803)

Defendant Signature: 

Radar (Mov/Sta): Lidar #:
Stop Type: NON TRAFFIC
Trailer Tag: Have Insurance: No
Trailer State: Insurance Exp:
HazMat Vehicle: Yes Turning:
Workers Present: No Insp Exp (MMYY):
Suspension Date: Accident: No
Unit: Void Citation: Yes
Phone: Evidence Involved: Yes
of Occ: Work Phone:
Hwy Type: DL Exp: 09/11/2003
HBD: Wgt: 180
Result %: Beat: *NONE
Drug Susp.: No Test Type:
Attitude: Complaining Towed: No
> 16 Pass: Ped Safety Zone: No
Perm Phone: Tint %:
Void Reason: CHAIN OF COMMAND NCF

Business Name:
Business Addr.:
Address Type: Business
Business City: State: NV Zip:

Compl. Name:
Compl. Phone:
Compl. Address:
Compl. City: State: NV Zip:

Stop Info

Create Racial Profiling Info: Yes
Companion Case/Cite #:
Ethnicity: H
Driver Search Conducted: Incident to Arrest
Vehicle Search Conducted: *NONE
Contraband: None, , ,
Arrest: No
Arrest Due to Contraband: No

Exhibit L

Case No. 23-CR-013015
Docket

REGISTER OF ACTIONS

CASE NO. 23-CR-013015

State of Nevada vs. DECASTRO, JOSE

§
§
§
§
§Case Type: Misdemeanor CR
Date Filed: 03/15/2023
Location: JC Department 8

PARTY INFORMATION

Defendant DECASTRO, JOSE
 Other Agency Numbers
 1669561 Justice Court Scope ID Subject
 Identifier

Lead Attorneys
 Michael Mee
 Retained
 702-308-6363(W)

State of State of Nevada
Nevada

CHARGE INFORMATION

Charges: DECASTRO, JOSE
 1. False stmt to/obstruct pub off [52312]
 2. Resist public officer [52990]

	Statute	Level	Date
	197.190	Misdemeanor	03/15/2023
	199.280.3	Misdemeanor	03/15/2023

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

03/19/2024 **Disposition** (Judicial Officer: Zimmerman, Ann E.)
 1. False stmt to/obstruct pub off [52312]
 Guilty as Charged
 2. Resist public officer [52990]
 Guilty as Charged

03/19/2024 **Misdemeanor Sentence** (Judicial Officer: Zimmerman, Ann E.)
 1. False stmt to/obstruct pub off [52312]

03/19/2024 **Misdemeanor Sentence** (Judicial Officer: Zimmerman, Ann E.)
 2. Resist public officer [52990]

OTHER EVENTS AND HEARINGS

03/15/2023 **Original Track Assignment JC08**

03/15/2023 **Case Assignment Sent**

Case Assignment Sent

03/15/2023 **DA Request for Prosecution**

Request for Prosecution Sent to DA

03/29/2023 **Case Assignment Sent**

Case Assignment Sent

03/29/2023 **Citation Image**

03/29/2023 **Supplemental Documentation Submitted with Citation**

03/30/2023 **Media Request for Electronic Coverage**

of Court proceedings filed.

04/03/2023 **Media Request for Electronic Coverage Granted**

04/03/2023 **Order Regarding Media Request for Electronic Coverage Filed**

06/12/2023 **Notice of Appearance**

Notice of Appearance of Defense Counsel

06/13/2023 **Arraignment** (8:00 AM) (Judicial Officer Zimmerman, Ann E.)

NO BAIL POSTED

Result: Matter Heard

06/13/2023 **Counsel Confirms as Attorney of Record**

M. Mee, Esq.

06/13/2023 **Arraignment Completed**

Defense advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint

06/13/2023 **Discovery Given to Counsel in Open Court**

06/13/2023 **Early offer received in open court**

Continued for negotiations

06/13/2023 **Minute Order - Department 08**

06/27/2023 **Negotiations** (8:00 AM) (Judicial Officer Zimmerman, Ann E.)

NO BAIL POSTED

Result: Matter Heard

06/27/2023 **Defendant Rejected the State's Offer**

06/27/2023 **Plea of Not Guilty Entered**

by Defense

06/27/2023 **Minute Order - Department 08**

09/01/2023 **Motion**

		lvjcpa.clarkcountynv.gov/Anonymous/CaseDetail.aspx?CaseID=14039208
09/06/2023	Motion for Production of Discovery	
	Motion (8:00 AM) (Judicial Officer Zimmerman, Ann E.)	
	NO BAIL POSTED	
	Result: Matter Heard	
09/06/2023	Motion to Continue - Defense	
	by Defense for production of discovery no objection by State- granted	
09/06/2023	Future Court Date Stands	
	09/12/2023 at 9:30am for Bench Trial	
09/06/2023	Minute Order - Department 08	
09/12/2023	Bench Trial (9:30 AM) (Judicial Officer Zimmerman, Ann E.)	
	No bail posted	
	Result: Matter Heard	
09/12/2023	Motion to Continue - Defense	
	to review additional discovery - No objection by State - Granted	
09/12/2023	Bench Trial Date Reset	
09/12/2023	Minute Order - Department 08	
11/28/2023	Motion	
	Renewed Motion for Discovery	
11/30/2023	Motion (8:00 AM) (Judicial Officers Pro Tempore, Judge, Jansen, William D.)	
	No bail posted	
	Result: Matter Heard	
11/30/2023	Motion	
	by Defense for Discovery - State represents all discovery in their possession has been turned over - Denied	
11/30/2023	Comment	
	State represents they will be filing a Hill Motion to Continue the Bench Trial as the lead officer is unavailable.	
11/30/2023	Future Court Date Stands	
	12/6/23 at 9:30 am for Bench Trial	
11/30/2023	Minute Order - Department 08	
11/30/2023	Notice of Motion	
	State's Notice of Motion and Motion to Continue	
12/06/2023	Bench Trial (9:30 AM) (Judicial Officer Zimmerman, Ann E.)	
	No bail posted	
	Result: Matter Heard	
12/06/2023	Hill Motion by State to Continue - Granted	
	Witness unavailable until after the start of the year.	
12/06/2023	Bench Trial Date Reset	
12/06/2023	Minute Order - Department 08	
01/23/2024	Bench Trial (9:30 AM) (Judicial Officer Zimmerman, Ann E.)	
	No Bail Posted	
	Result: Matter Continued	
01/23/2024	Motion to Continue - Defense	
	Due to medical reasons. No objection by State - Granted	
01/23/2024	Bench Trial Date Reset	
	Firm Setting.	
01/23/2024	Minute Order - Department 08	
01/24/2024	Media Request for Electronic Coverage	
	of Court proceedings filed.	
01/24/2024	Order Regarding Media Request for Electronic Coverage Filed	
02/26/2024	Bench Trial (9:30 AM) (Judicial Officer Zimmerman, Ann E.)	
	No Bail Posted	
	Result: Matter Heard	
02/26/2024	Remote Appearance by	
	Defendant via Zoom	
02/26/2024	Motion to Continue - Defense	
	Counsel is in Trial - No objection by State - Granted	
02/26/2024	Bench Trial Date Reset	
02/26/2024	Minute Order - Department 08	
03/18/2024	Motion	
	DEFENDANTS REQUEST TO CONVERT COUNSEL TO STANDBY COUNSEL	
03/18/2024	Miscellaneous Filing	
	Bench Memorandum	
03/19/2024	Bench Trial (9:30 AM) (Judicial Officer Zimmerman, Ann E.)	
	No bail posted	
	Result: Matter Heard	
03/19/2024	Bench Trial Held	
	Motion to Exclude Witnesses by State - Motion Granted States Witnesses: 1. Branden Bourque - Witness Identified Defendant State Rests. Defense Witnesses: 1. Jose Decastro Sworn In and Testified. Defense Rests Motion to Dismiss and Argument In Favor of Said Motion by Defense Argument Against Said Motion by State Thereupon the Court Found the Defendant Guilty. Arguments made by parties regarding sentencing.	
03/19/2024	Judgment Entered	
03/19/2024	Remand - Cash or Surety	
	Counts: 001; 002 - \$0.00/\$0.00 Total Bail	
03/19/2024	Case Closed - Court Order	
03/19/2024	Minute Order - Department 08	
03/19/2024	Comment	
	Both (2) of Defendant's cell phones where returned to his counsel and is in M. Mee, Esq. possession.	
03/19/2024	Notice	
	Notice of Appeal	
03/20/2024	Notice of Disposition and Judgment	
03/20/2024	Temporary Custody Record	
	Remand 3/19/24	
03/20/2024	Appeal from LVJC - Appearances	
03/26/2024	Motion	
	Motion for Bail, or in the Alternative, for Own Recognizance Release	
03/28/2024	Media Request for Electronic Coverage	

04/01/2024 *of Court proceedings filed.*
Motion (8:00 AM) (Judicial Officer Zimmerman, Ann E.)
In custody
Result: Matter Heard

04/01/2024 **Media Request for Electronic Coverage**
of Court proceedings filed - LV Review Journal

04/01/2024 **Order Regarding Media Request for Electronic Coverage Filed**

04/01/2024 **Media Request for Electronic Coverage Granted**
Las Vegas Review Journal

04/01/2024 **Media Request for Electronic Coverage Granted**
DALI TALK

04/01/2024 **Order Regarding Media Request for Electronic Coverage Filed**
DALI TALK

04/01/2024 **Motion**
by Defense, for O/R or Bail - Objection by State - Motion Denied

04/01/2024 **Custody Comment**
Case Closed Stands

04/01/2024 **Remand - Cash or Surety**
Counts: 001; 002 - \$0.00/\$0.00 Total Bail

04/01/2024 **Minute Order - Department 08**